

STATE OF MICHIGAN
COURT OF APPEALS

ANTHONY RAY EPPERSON,

Plaintiff-Appellant,

v

ARTHUR R. BUTLER,

Defendant-Appellee.

UNPUBLISHED

April 4, 2000

No. 213486

Wayne Circuit Court

LC No. 98-804663-NM

Before: Wilder, P.J., and Sawyer and Markey, JJ.

MEMORANDUM.

Plaintiff appeals by right from the trial court's order granting defendant's motion for summary disposition. We affirm.

Plaintiff was convicted of aggravated stalking, MCL 750.411i; MSA 28.643(9), and habitual offender, second offense, MCL 769.10; MSA 28.1082, and sentenced to prison. Defendant was appointed to act as plaintiff's appellate counsel. No appeal was pursued.

Plaintiff filed a complaint for legal malpractice, alleging that defendant failed to pursue meritorious issues on appeal. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10), arguing that plaintiff's claim was untimely, that it did not set forth facts that would establish legal malpractice, and that no genuine issue of fact existed. The trial court granted defendant's motion, but did not specify the ground or grounds on which it did so.

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We disagree and conclude that summary disposition was proper under MCR 2.116(C)(8). We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997). The elements of legal malpractice are: (1) the existence of an attorney-client relationship; (2) negligence in the legal representation of the plaintiff; (3) the negligence was a proximate cause of an injury; and (4) the fact and extent of the injury alleged. *Coleman v Gurwin*, 443 Mich 59, 63; 503 NW2d 435 (1993).

In his complaint alleging legal malpractice, plaintiff claimed that defendant was negligent in failing to pursue meritorious issues on appeal. He alleged that he was denied due process when he received two continuances from the Parole Board; however, he did not allege that any negligence on the part of defendant was a proximate cause of this injury. To establish proximate cause, a plaintiff in a legal malpractice action must show that the defendant's action was a cause in fact of the claimed injury by introducing evidence that supports a conclusion that it is more likely than not that the conduct of the defendant was a cause in fact of the result. *Pontiac School Dist v Miller, Canfield, Paddock & Stone*, 221 Mich App 602, 614-615; 563 NW2d 693 (1997). An actual injury must be shown to have resulted from the malpractice. *Keliin v Petrucelli*, 198 Mich App 426, 429-430; 499 NW2d 360 (1993). Taking plaintiff's well-pled facts as true, we conclude that his claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery. MCR 2.116(C)(8).

We affirm.

/s/ Kurtis T. Wilder
/s/ David H. Sawyer
/s/ Jane E. Markey